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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

Innovation Law Lab, *et al.*,) Civil Action No. 3:19-cv-0807-RS
Plaintiffs,)
v.)
Kirstjen Nielsen, *et al.*,)
Defendants.)
)

) ORDER
**THE PARTIES' JOINT STIPULATION
FOR AN EXTENSION OF TIME
TO RESPOND TO UPCOMING
DEADLINES**

1 The parties hereby jointly stipulate to an extension of time for: (1) Defendants to answer
 2 or otherwise respond to the Complaint; and (2) the parties to file their initial case management
 3 statement, along with a corresponding extension of the date of the initial case management
 4 conference. The parties offer the following support for their stipulation:

5 1. Plaintiffs filed their Complaint on February 14, 2019, *see* Dkt. 1, and served their
 6 Complaint on Defendants on February 28, 2019.

7 2. On April 8, 2019, this Court granted Plaintiffs' motion for a preliminary
 8 injunction. *See* Dkt. 73. Thereafter, Defendants filed a notice of appeal from this Court's
 9 order. *See* Dkt. 75.

10 3. Subsequently, the U.S. Court of Appeals for the Ninth Circuit set a deadline of
 11 May 8, 2019 for Defendants to file their opening brief. *See Innovation Law Lab et al. v.*
 12 *Kirstjen Nielsen et al.*, No. 19-15716, Dkt. 2 (9th Cir. Apr. 11, 2019). In addition,
 13 Defendants "exercise[d] their right to seek a stay from the Court of Appeal[s]," Dkt. 73 at 26,
 14 and, in the interim, the Ninth Circuit administratively stayed the preliminary injunction
 15 pending consideration of Defendants' motion to stay. *See Innovation Law Lab et al. v.*
 16 *Kirstjen Nielsen et al.*, No. 19-15716, Dkt. 6 (9th Cir. Apr. 12, 2019).

17 4. In view of the pending Ninth Circuit litigation, this Court granted Defendants'
 18 consent motion for a 30-day extension of time to answer or otherwise respond to the
 19 Complaint on or before May 29, 2019. *See* Dkt. 79.

20 5. On April 26, the Ninth Circuit issued an Order modifying the briefing schedule
 21 while the panel considered Defendants' motion for a stay. As a result of the Order, the
 22 deadline for Defendants to submit their opening brief is now May 22. *See Innovation Law*
23 Lab et al. v. Kirstjen Nielsen et al., No. 19-15716, Dkt. 20 (9th Cir. Apr. 20, 2019).

24 6. On May 7, the Ninth Circuit, in a published opinion, granted Defendants' motion
 25 for a stay, finding that Defendants were "likely to prevail" on Plaintiffs' claims that the
 26 Migrant Protection Protocols (MPP) lacks statutory authorization and that MPP should have
 27 gone through notice and comment rulemaking, the only claims that "could justify a
 28 nationwide injunction halting the implementation of the MPP on a wholesale basis," and that

1 “[t]he remaining factors governing issuance of a stay pending appeal weigh in the
 2 government’s favor.” *Innovation Law Lab et al. v. Kirstjen Nielsen et al.*, No. 19-15716, ---
 3 F.3d ----, 2019 WL 2005745*1-5 (9th Cir. May 7, 2019).

4 7. Defendants’ opening brief in the Ninth Circuit remains due on May 22, while
 5 Plaintiffs’ answering brief is due on June 19. Defendants’ reply brief is due within 21 days
 6 after service of Plaintiffs’ answering brief. *See Innovation Law Lab et al. v. Kirstjen Nielsen*
 7 *et al.*, No. 19-15716, Dkt. 20 (9th Cir. Apr. 20, 2019).

8 8. In light of these developments, Defendants request an additional 60-day extension
 9 of time to answer or otherwise respond to the Complaint so that their response must be filed
 10 on or before July 29, 2019. Plaintiffs have consented to this request.

11 9. In addition, the parties seek to extend the deadline for the filing of the case
 12 management statement, which is currently due by May 16, *see* Dkt. 36, until May 30, 2019.
 13 The parties seek a corresponding extension of the initial case management conference,
 14 currently scheduled for May 23. *See* Dkt. 36.

15 10. The parties further note that they have initially met and conferred concerning how
 16 this case should proceed in light of the Ninth Circuit’s stay of the injunction and the
 17 upcoming merits briefing in Defendant’s appeal.

18 a. Plaintiffs believe they are entitled to limited discovery, and wish to meet and
 19 confer concerning discovery as part of preparation of the case management
 20 statement. Plaintiffs believe that, consistent with Ninth Circuit authority, district
 21 court proceedings in this case should proceed pending the interlocutory appeal,
 22 and discovery is appropriate and necessary, at a minimum, with regard to details
 23 of the agency procedures governing the assessment of fear of return to Mexico. In
 24 addition, the completeness of the administrative record has not been resolved.

25 b. Defendants believe discovery is inappropriate in an Administrative Procedure Act
 26 case such as this where they have already served the certified administrative
 27 record, where the pending appeal involves the same certified administrative
 28 record, and where no answer or responsive pleading has yet been filed.

1 Accordingly, Defendants notify the court of their intention, should the parties not
2 reach an agreement on how this case should proceed or on discovery matters, to
3 move to stay proceedings in district court pending resolution of the appeal.

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1 Respectfully submitted,

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26 Dated: May 16, 2019

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37 Dated: May 16, 2019

38 *Attorney for Plaintiffs*

1 **[PROPOSED] ORDER**
2

3 PURSUANT TO STIPULATION, IT IS HEREBY ORDERED that:

- 4 1. Defendants must respond to the Complaint on or before July 29, 2019.
5
6 2. The initial case management statement must be filed on or before May 30, 2019.
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8 3. The initial case management conference will be held one week after the filing of the
9 initial case management statement.

10 Issued this 20th day of May, 2019



11 United States District Judge
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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of for the Northern District of California by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

By: /s/ Archith Ramkumar
Archith Ramkumar
Trial Attorney
United States Department of Justice
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